

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**MANUAL PEREZ, Individually, and as
the Executor of the Estate of Dolores
Perez,**

Plaintiff,

v.

**Civil No. 1:06-cv-948
(GLS/RFT)**

**VALASTRO, L.L.C., doing business as
Adirondack Bar & Grill, and STACY
L. GOODSPEED as the Administrator
of the Estate of Jason S. Goodspeed,**

Defendants.

KATHLEEN CURNS and LINDA ZUKAITIS,

Plaintiffs,

v.

**Civil No. 1:06-cv-1336
(GLS/DRH)**

WAL-MART STORES INC.,

Defendant.

ENERGY SERVICES PROVIDERS, INC.,

Plaintiff,

v.

**Civil No. 1:07-cv-686
(GLS/DRH)**

CONSUMER SALES SOLUTIONS, LLC,

Defendant.

**THE ANDERSON GROUP, LLC and
GAIL ANDERSON,**

Plaintiffs,

v.

**Civil No. 1:05-cv-1369
(GLS/DRH)**

CITY OF SARATOGA SPRINGS, ET AL.,

Defendants.

**ONEBEACON AMERICA INSURANCE
COMPANY, as subrogee of The
Garrett Hotel Group, Inc.,**

Plaintiff,

v.

**Civil No. 8:07-cv-900
(GLS/RFT)**

**COMSEC VENTURES INTERNATIONAL,
INC., and MAHONEY NOTIFY-PLUS,
INC.,**

Defendants.

DONNA HOFLER,

Plaintiff,

v.

**Civil No. 1:07-cv-1055
(GLS/DRH)**

FAMILY OF WOODSTOCK, INC.,

Defendant.

**CHERYL CIPPERLEY and ART
CIPPERLEY,**

Plaintiffs,

v.

**Civil No. 1:07-cv-1136
(GLS/DRH)**

**ATS, INC. and OCTAVIO CAYETANO,
SR.,**

Defendants.

WANT AD DIGEST, INC.,

Plaintiff

v.

**Civil No. 1:08-cv-189
(GLS/DRH)**

**DISPLAY ADVERTISING, INC and
EDWARD H. SPAIN,**

Defendants.

**TIMOTHY E. COUGHTRY and
JOANN E. COUGHTRY,**

Plaintiffs,

v.

**Civil No. 1:08-cv-875
(GLS/RFT)**

TRACKER MARINE, LLC,

Defendant.

APPEARANCES:

PEREZ, ET AL. (1:06-cv-948)

FOR PLAINTIFF PEREZ:

Powers, Santola Law Firm
39 North Pearl Street
2nd Floor
Albany, New York 12207-2205
(518) 465-5995

OF COUNSEL:

JOHN H. FISHER, ESQ.

**FOR DEFENDANT VALASTRO,
L.L.C.:**

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1624 Genesee Street
Utica, New York 13502
(315) 735-7566

DAVID H. WALSH, IV, ESQ.

FOR DEFENDANT GOODSPEED:

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(518) 429-4275

CHARLES Z. FELDMAN, ESQ.

CURNS, ET AL. (1:06-cv-1336)

**FOR PLAINTIFFS CURNS and
ZUKAITIS:**

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ANDREW S. GOODSTADT,
ESQ.

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**FOR DEFENDANT WAL-MART
STORES INC.:**

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900 Third Avenue
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JOEL L. FINGER, ESQ.
MARGUERITE S. WYNNE, ESQ.

ENERGY, ET AL. (1:07-cv-686)

**FOR PLAINTIFF ENERGY SERVICE
PROVIDERS, INC.:**

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MARK J. MCCARTHY, ESQ.

**FOR DEFENDANT CONSUMER
SALES SOLUTIONS, LLC:**

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EDWARD G. BAILEY, ESQ.

ANDERSON, ET AL. (1:05-cv-1369)

FOR THE ANDERSON PLAINTIFFS:

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REED N. COLFAX, ESQ.
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PETER A. LYNCH, ESQ.

**FOR THE CITY OF SARATOGA
SPRINGS DEFENDANTS:**

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P.O. Box 2485
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(518) 899-5700

GREGG T. JOHNSON, ESQ.

ONE BEACON, ET AL. (8:07-cv-900)

**FOR PLAINTIFF ONEBEACON
AMERICA INSURANCE
COMPANY:**

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The Atrium
1900 Market Street
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JOHN B. GALLIGAN, ESQ.

Hacker, Murphy Law Firm
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JAMES E. HACKER, ESQ.

**FOR DEFENDANT COSMEC
VENTURES INTERNATIONAL
INC.:**

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(518) 862-9292

THOMAS J. O'CONNOR, ESQ.
ASA S. NEFF, ESQ.

**FOR DEFENDANT MAHONEY
NOTIFY-PLUS, INC.:**

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White Plains, New York 10604
(914) 323-7000

CATHLEEN A. GIANNETTA,
ESQ.
THOMAS A. LEGHORN, ESQ.
BERNICE E. MARGOLIS, ESQ.

HOFLER, ET AL. (1:07-cv-1055)

FOR PLAINTIFF HOFLER:

Disability Advocates, Inc.
5 Clinton Square
Third Floor
Albany, New York 12207
(518) 432-7861

NINA LOEWENSTEIN, ESQ.
CLIFF ZUCKER, ESQ.

**FOR DEFENDANT FAMILY OF
WOODSTOCK, INC.:**

Roemer, Wallens Law Firm

DIONNE A. WHEATLEY, ESQ.

13 Columbia Circle
Albany, New York 12203
(518) 464-1300

CIPPERLEY, ET AL. (1:07-cv-1136)

FOR CIPPERLEY PLAINTIFFS:

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1279 Route 300
Newburgh, New York 12550
(845) 562-0203

ELEANOR L. POLIMENI, ESQ.
FRANCIS NAVARRA, ESQ.

**FOR DEFENDANTS ATS, INC.
and OCTAVIO CAYETANO, SR.:**

Office of Lorne M. Reiter
14 Wall Street
20th Floor
New York, New York 10005
(212) 222-0955

LORNE M. REITER, ESQ.

WANT AD ET AL. (1:08-cv-189)

**FOR PLAINTIFF WANT AD
DIGEST, INC.:**

Girvin, Ferlazzo Law Firm
20 Corporate Woods Boulevard
2nd Floor
Albany, New York 12211-2350
(518) 462-0300

SALVATORE D. FERLAZZO,
ESQ.
ROBERT F. MANFREDO, ESQ.

**FOR DEFENDANT
EDWARD H. SPAIN:**

Edward H. Spain

Pro Se
24 21st Street
Watervliet, New York 12189

**FOR DEFENDANT DISPLAY
ADVERTISING, INC.**

No Appearance

COUGHTRY, ET AL. (1:08-CV-875)

**FOR PLAINTIFFS TIMOTHY
E. COUGHTRY and JOANN
E. COUGHTRY:**

Whiteman, Osterman Law Firm
One Commerce Plaza
Suite 1900
Albany, New York 12260
(518) 487-7600

WILLIAM S. NOLAN, ESQ.

**FOR DEFENDANT TRACKER
MARINE, LLC:**

Hodgson, Russ Law Firm
677 Broadway
Suite 301
Albany, New York 12207
(518) 465-2333

RICHARD L. WEISZ, ESQ.

**Gary L. Sharpe
District Court Judge**

4th Amended Trial Order

All relevant Uniform Pretrial Scheduling Order deadlines having expired in the above nine (9) captioned cases, are hereby designated "trial ready" in the numerical order listed, and shall proceed to trial during a jury term beginning on **Monday, May 17, 2010**, and continuing thereafter on a daily schedule. All listed actions are governed by this Scheduling Order **unless** they are designated "exempt" according to the terms of this order, and a new Scheduling Order is issued by a Magistrate or District Court Judge.

In order of priority, the cases are designated as follows:

- 1. Perez, et al. (1:06-cv-948);**
- 2. Curns, et al. (1:06-cv-1336);**
- 3. Energy Services, et al. (1:07-cv-686);**
- 4. Anderson, et al. (1:05-cv-1369);**
- 5. OneBeacon, et al. (8:07-cv-900);**
- 6. Hofler, et al. (1:07-cv-1055);**
- 7. Cipperley, et al. (1:07-cv-1136);**
- 8. Want Ad Digest, Inc., et al. (1:08-cv-189);**
- 9. Coughtry, et al. (1:08-cv-875);**

Schedule

Unless an action is designated “exempt,” all parties **shall** proceed in accordance with the schedule established in this order and attachment.

Trials

The attorneys and parties in the first action on the trial ready list, or in the first action on any subsequently amended trial ready list, **shall appear** at Courtroom No. 6, 445 Broadway, Albany, New York, First Floor, South, for trial beginning promptly at **9:30 a.m. on Monday, May 17, 2010**.

Each succeeding action on the trial ready list shall proceed on the day following completion of the action preceding it, unless a different date is otherwise ordered by the court.

The parties are hereby notified that their trial dates **will advance** should a case preceding them on the trial ready list settle, or for any other reason, be removed from the list.¹ The parties are further advised that should a case be removed from the trial ready list because of settlement or

¹The attorneys representing each party on the trial ready list are set forth in the caption, and parties are free to consult with those ahead of them on the list. Furthermore, the parties may consult with Courtroom Deputy, John Law, concerning alterations in their numerical order, and will receive electronic notice as soon as is reasonably practicable should such alterations occur.

some other non-exempt factor on or after **Thursday, May 13, 2010, at 4:00 p.m.**, the court may impose **sanctions** pursuant to N.D.N.Y. L.R. 47.3.

Final Pretrial Conferences

To the extent practicable, final pretrial conferences will be subsequently scheduled within the week preceding the anticipated trial date. The attorneys for all parties in each action **shall appear** at this court's chambers, 445 Broadway, Albany, New York, First Floor, South, for the final pretrial conference.

Note: The court will not conduct a settlement conference during the final pretrial conference. The co-assigned Magistrate Judges are available for settlement conferences, and the court expects that parties, if they elect to do so, will schedule such a conference with the Magistrate Judge on or before May 6, 2010.

Pretrial Submissions²

Pursuant to **Attachment 1**, pretrial submissions **in all cases shall be filed in accordance with the schedule set forth in Attachment 1.**

²To the extent that the requirements of this Order and attachments are inconsistent with any prior Uniform Pretrial Scheduling Order, this Order and attachments control.

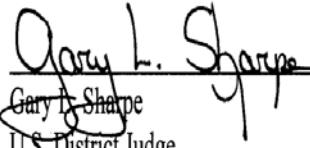
Exemptions

If a case is designated as “exempt” because it meets either of the two following criteria, it will be removed from the trial ready list and referred to a designated Judge who may elect to issue a new scheduling order setting new fixed dates for all further proceedings, including pretrial submissions and trial:

1. If, on or before **expired**, all parties in an action file a Consent to the Exercise of Jurisdiction by a Magistrate Judge (see General Order 25, 28 U.S.C. § 636(c), N.D.N.Y. L.R. 72.2(b), and Attachment), the court will issue an Order of Reference, and designate the action as “exempt”; or
2. If this court subsequently refers an action to another District Court Judge, the case will be designated “exempt” if the referral Judge elects to issue an amended scheduling order.

IT IS SO ORDERED.

April 13, 2010
Albany, New York


Gary L. Sharpe
U.S. District Judge

Attachment #1

Pretrial Submissions

N.B. Unless otherwise noted, all parties shall electronically file and serve all pretrial submissions in accordance with General Order No. 22, ¶ 5.

The following pretrial submissions **shall** be filed in accordance with this Order.

1. Joint Pretrial Stipulation

On or before **expired**, a joint pretrial stipulation shall be subscribed by counsel for all parties, and shall contain:

- (1) The basis of federal jurisdiction;
- (2) A list of all exhibits which can be stipulated into evidence or which will be offered without objection as to foundation; and
- (3) Relevant facts not in dispute.

2. Voir Dire

On or before **expired**, each party shall submit a numbered list of questions which the court, in the exercise of its discretion, may use during jury selection.

3. Witnesses

- (1) On or before **expired**, counsel shall file a witness list containing the following information regarding the witnesses that may be called to testify at trial other than solely for impeachment purposes:

- (a) The name and, if not previously provided, the address (city only) of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises.

N.B.: Personal Privacy Protections may apply to disclosure of this information. See Local Rule 8.1; General Order No. 22, ¶¶ 2.1.3, 11.1-11.2 and 12.2.

- (b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition (including video-taped deposition), specifically identifying the pertinent portions of the deposition testimony to be offered.

(2) The unavailability of any witness, expert, or otherwise, will not be grounds for a continuance. In order to avoid the possibility of proceeding at trial without the testimony of an unavailable witness, counsel, where appropriate, shall preserve the testimony by written or video-taped deposition for possible use at trial. (Please refer to the attached instruction sheet for the use of video-taped depositions.)

4. Exhibits

(1) All exhibits shall be marked for identification in the manner prescribed hereinafter. A complete set of copies of the exhibits or, alternatively, a copy of a CD-ROM containing the exhibits shall be presented to Judge Sharpe's Deputy Courtroom Clerk **AT THE BEGINNING OF TRIAL.**

- (2) The exhibits shall have been inspected by the opposing party and copied at their expense (unless waived)
BEFORE TRIAL COMMENCES. All documents and/or papers intended as exhibits or to be used during the course of trial, including but not limited to documents, photographs, charts, diagrams, etc., shall be assembled in **BINDERS AND/OR ON CD-ROM** with each document properly marked at the lower right corner for identification purposes as directed below. In voluminous cases, consult with Judge Sharpe's Courtroom Clerk for the proper procedure to follow.
- (3) During the course of trial the Deputy Courtroom Clerk shall take charge of exhibits that are received into evidence. At the conclusion of the trial, the Courtroom Deputy Clerk will immediately return all of the exhibits to the proper parties. It is the responsibility of the parties to maintain the exhibits and to produce the exhibits for any appeal.
- (4) **BEFORE TRIAL COMMENCES,** counsel shall electronically file and serve an Exhibit List. The exhibits shall be listed on the form prescribed by the Court, a copy of which is attached to this Order. Counsel are to supply all the requested information with the exception of the two "Date Boxes" which should remain blank.
- (5) Counsel shall fill in the appropriate markers leaving the "File" and "Deputy Clerk" lines blank. All exhibits shall be assigned numbers by using a prefix of "P" for plaintiff, "D" for defendant, and "G" for Government (U.S. Attorney).

Plaintiff's exhibits should be denoted as: P-1, P-2, P-3, etc. Defendant's exhibits should be denoted as: D-1, D-2, D-3, etc. Government's exhibits should be denoted as: G-1, G-

2, G-3, etc. In cases involving multiple defendants, the exhibits shall be denoted with the initial of the last name of the defendant and its numerical identification number.

Stickers shall be affixed whenever possible to the lower right-hand corner of the exhibit. If the exhibit marker is going to cover any information on the exhibit, then affix the marker to the reverse side of the exhibit.

5. Trial Brief

On or before **expired**, counsel shall electronically file and serve a trial brief containing argument and citations on any and all disputed issues of law, citing the applicable rules of evidence and case law. Trial briefs should also include any evidentiary issues that are expected to arise.

6. Requests to Charge and Proposed Special Verdict Form

On or before **expired**, counsel shall ***traditionally*** file with the Clerk's Office and serve upon opposing counsel requests to charge and a proposed Special Verdict Questionnaire on either a CD-ROM or 3.5-inch computer disk, preferably in WordPerfect format. The requests to charge need only include instructions that are specific to the law in this case regarding liability, damages, and any unusual issues. The Court has usual boilerplate instructions.

7. Motions in Limine

On or before **expired**, counsel shall electronically file and serve any motions in limine, citing the applicable rules of evidence and case law. Opposing counsel shall file any response to motions in limine no later than **April 19, 2010**.

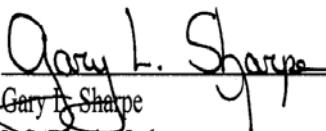
MOTIONS IN LIMINE MAY NOT OTHERWISE BE FILED

WITHOUT LEAVE OF THE COURT.

8. Depositions

(1) **BEFORE TRIAL**, counsel shall electronically file all non-video taped depositions to be used at trial. Counsel shall traditionally file all video-taped depositions to be used at trial. (See General Order No. 22, ¶¶ 1.2, unnumbered paragraph following 2.1.6). To the extent possible, objections are to be resolved between the parties. Areas of unresolved disagreement shall be presented to the Court for ruling at the Final Pretrial Conference. (See attached instruction sheet for use of video-taped depositions.)

April 13, 2010
Albany, New York



Gary L. Sharpe
U.S. District Judge

INSTRUCTIONS FOR THE USE OF VIDEO TAPE DEPOSITIONS

COUNSEL ARE TO VIEW ALL VIDEOTAPES WHICH MAY BE OFFERED INTO EVIDENCE AT THE TIME OF TRIAL. ALL VIDEO-TAPED DEPOSITIONS TO BE USED AT TRIAL SHALL BE FILED WITH THE CLERK'S OFFICE AT LEAST ONE WEEK BEFORE THE TRIAL READY DATE. NOT EARLIER THAN ONE WEEK AND NOT LESS THAN FOUR DAYS PRIOR TO THE TRIAL READY DATE, EACH PARTY SHALL INDICATE TO THE OTHER PARTY THE PORTION OF THE DEPOSITION TO BE OFFERED. TO THE EXTENT POSSIBLE, OBJECTIONS ARE TO BE RESOLVED BETWEEN THE PARTIES. COUNSEL SHALL SUBMIT ALL OBJECTIONS IN WRITING TO THE COURT FOR RULING PRIOR TO THE TRIAL READY DATE.

THE CLERKS OFFICE HAS AVAILABLE A VHS FORMAT VIDEO CASSETTE PLAYER AND TELEVISION FOR USE AT TRIAL. PLEASE BE ADVISED THAT YOU MUST PROVIDE A PERSON TO RUN THE EQUIPMENT DURING THE COURSE OF THE TRIAL.

ELECTRONIC VISUAL EVIDENCE PRESENTER

IN ADDITION TO THE VIDEO EQUIPMENT NOTED ABOVE, THE COURT HAS AVAILABLE A VISUAL EVIDENCE PRESENTER WHICH WILL ALLOW COUNSEL TO DISPLAY PHOTOS (NEGATIVES OR POSITIVES), DOCUMENTS, X-RAYS, AND 3-D OBJECTS , WITHOUT WIRES, ON TELEVISIONS PLACED THROUGHOUT THE COURTROOM. THIS EQUIPMENT IS AVAILABLE AT THE COURTHOUSES IN ALBANY, SYRACUSE, UTICA AND BINGHAMTON. USE OF THE VISUAL PRESENTER MAY BE REQUIRED BY THE TRIAL JUDGE PRESIDING OVER YOUR CASE. FOR FURTHER INFORMATION ON THE USE OF THIS EQUIPMENT, PLEASE CONTACT THE COURTROOM DEPUTY CLERK FOR THE ASSIGNED TRIAL JUDGE.

<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>

Page 1 of ____

United States District Court
For The Northern District Of New York

Case No. _____

Date: _____

Presiding Judge: _____

() Plaintiff

() Defendant

() Court

Exhibit No.	Marked for Identification	Admitted Into Evidence	Remarks	Witness	Exhibit Description

Exhibits Returned To Counsel (Date):_____

Signature:_____

Page __ of __

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Signature:_____